MOTION FILED
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No. 90-401

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

BETSEY WARREN LEBBOS,

Petitioner

vs.

SUPREME JUDICIAL COURT OF
THE COMMONWEALTH OF
MASSACHUSETTS

Respondent

MOTION FOR LEAVE TO FILE AND AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

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Amicus Curiae
for Petitioner

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Now comes John B. Gunn, a duly licensed and practicing California attorney and counselor at law, and requests leave of court, pursuant to United States Supreme Court Rule 37, to file an Amicus Curiae brief at the Petition stage in support of this Honorable Court's grant of the

Petition for a Writ of Certiorari and for Petitioner, Attorney Betsey Warren Lebbos.

The Petition should be granted to vacate a judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts giving Full Faith and Credit to California statutes while not recognizing the California Constitution's prohibitions on said statutes and which declined to consider the unconstitutionality of the California statutes creating an alleged State Bar Court under the United States Constitution.

Amicus wishes to appear and address an issue of substantial importance, but which appears somewhat overlooked to date. That issue is the unconstitutionality and non-recognition of the alleged

State Bar Court due to its creation in conflict with Article 6, sections 1, et. seq. of the California Constitution by asserting it has a) co-extensive and co-equal subject matter jurisdiction over licensing of lawyers to that of the State Supreme Court, and b) co-equal and co-extensive subject matter jurisdiction to try the merits of law suits pending in the constitutional courts of law.

Amicus believes it is essential that there not be conflicting claims to original jurisdiction over a subject matter, forcing attorneys to try their cases in two jurisdictions at once. Amicus further submits that when one of the entities claiming jurisdiction has none and is not empowered

to either assert such subject matter jurisdiction or act on it, yet it can divest the real court of its subject matter jurisdiction, as it did in the Lebbos case, by merely ex parte preventing the attorney from appearing and arguing the case in the real court of law, a serious problem arises of the supremacy of the Constitutional Courts of Law. That serious problem mandates a declaration that the State Bar court is a Nullity in the law and that it was an error of law to grant a judgment based on a claim of recognition by another state to such an unconstitutional court and entity.

Amicus submits that the Full Faith and Credit clause required Massachusetts to recognize the

California Constitution as a " public act, record, or judicial proceeding, " and not statutes in conflict with it. Our state Constitution is the first public act to recognize. The Court thus erred in refusing to recognize any Constitutional challenges when our State Constitution is the first document to recognize and it prohibits the legislature creating any courts at all and ordered the state bar to be a corporation, and not a court. Our only permitted Courts are completely listed in our Constitution as our People abolished all legislative authority to create any new ones 24 years ago. Article 6, Section 1, Ca. Constitution.

This motion is filed now in order to comply with the deadline as the opposing party, Supreme Judicial Court, and Bar Counsel have not returned the written consent required of United States Supreme Court Rule 37.2.

Pursuant to United States Supreme Court Rule 37.1, Amicus is interested in the issues presented as a lawyer for 33 years in California affected by the grant or denial of this Petition. He wishes to bring to the Court's attention the relevant historical material, which has not already been brought to its attention and which has not been raised by the parties, except indirectly by Petitioner.

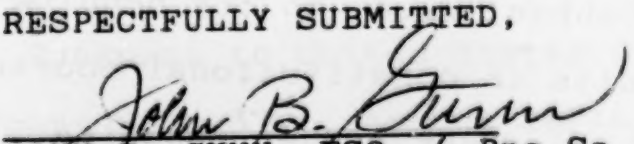
That relevant information concerns the need for this Court to

void the State Bar Court of the California State Bar Association by reason of its lack of any constitutional subject matter jurisdiction, and how it is seeking, as it did in the Lebbos' case, to try pending lawsuits in constitutional courts at the request of her opposing counsel, and is not only acting as a private opponent and competitor court, but is displacing our real courts of law.

Pursuant to United States Supreme Court rule 37, this Amicus brief should be dispositive of the issue of whether the principles of Comity or Full Faith and Credit may be applied to statutes creating an alleged State Bar Court of the California State Bar Association, a private organization. Amicus re-

quests the Petition be granted so that attorneys are not forced to try their cases in two alleged courts at the same time and lose their right to work if they refuse to do so.

RESPECTFULLY SUBMITTED,



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QUESTIONS PRESENTED

1. May a State give Full Faith and Credit to statutes but not to a State's Constitution ?

2. May a State recognize state statutes creating a State Bar Court while the State Constitution does not have such a Court listed and abolished all legislative authority to create any new ones 24 years ago ?

3. Is Due Process violated by state statutes which give private persons in a trade group the power to create a private court with no subject matter jurisdiction ?

4. May attorneys lose their right to work nation-wide by refusing to try their pending suits before a private trade group court ?

LIST OF PARTIES

The parties in the

Petition for a Writ of Certiorari

are as follows :

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Respondent Court

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AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

I.

Amicus' Interest in Issue

Amicus is interested in the Petition as one of 125,000 California attorneys immediately impacted by claims to licensing by his opponents and competitors in a

private Court. He is a duly licensed attorney for 33 years.

All references hereinafter, unless otherwise indicated, are to sections of the California Business and Professions Code.

Argument

I.

The State Bar Court is Unconstitutional as it seeks to claim to have and to divest the real courts of law of their original subject matter jurisdiction

Amicus suggests the first principle of substantive due process of law guaranteed by the fifth and fourteenth amendments to the United States Constitution is that no court, no judge, no person may act unless they have subject matter jurisdiction.

It has been said that it is essential to the proper rendition

of a judgment that the court have jurisdiction of the subject matter. Fauntleroy v.Lum, 210 US 230, 52 L.Ed. 1039; 28 S. Ct. 641. Subject matter jurisdiction is such an essential element of fundamental due process of law that it is not subject, as the California State Bar claims, to any degree of claim to discretion. Ex Parte Bradley (US) 7 Wall. 364, 19 L. Ed. 214. The rendition of a judgment without jurisdiction is a usurpation of power. The judgment becomes Corum Non Judice, and Ipso Facto void. Philadeplphia W and B. R. Co. v. Trimble (US) 10 Wall. 367, 19 L. Ed. 948, Martin v. Hunter (US) 1 Wheat 304, 4 L.Ed. 97: Valley v. Northern F and M Co., 254 US 348, 65 L.Ed. 297, 41 S. Ct.116.

A. Since the first principle is that a court must be one of competent jurisdiction, and the alleged State Bar Court is not one, it is void

The Courts are defined in Article 6, section 1 of the California Constitution, wherein it is stated that they possess the state's judicial power. The alleged State Bar court is not one of them. Article 6 further goes on to clarify the scope of subject matter jurisdiction of each of the permitted courts. It is clear that an alleged State Bar court has neither original, appellate, or special jurisdiction of any kind in the State of California.

The State Bar Court is not listed as a court nor is it granted any subject matter jurisdiction. The State Bar, instead, is created as a

corporation, and not a " Court." Art. 6, sec. 9, Ca. Consti. It is, thus, clear, that any alleged State Bar Court has no subject matter jurisdiction constitutionally. With no subject matter jurisdiction constitutionally, it is not a court of competent jurisdiction that may be recognized in another state.

B. The state bar's limited role is as an advisory administrative arm of the California Supreme Court, and perhaps now to the Court of Appeals, which are the only courts of competent jurisdiction involved in attorney discipline

The relation between courts and administrative agencies is not the same as the relation between upper and lower courts. Walling v. Benson (CA 8 Mo.) 137 F. 2d. 501, 149 ALR 186, cert. denied 320 US 791, 88 L. Ed.476, 64 S. Ct. 206. The judicial

process supplies the missing element in any administrative process without which there is no due process of law. The judicial process, and not the administrative process, supplies the missing element by having, especially in the field of attorney licensing, the power, the capacity, the legal knowledge and training to apply existing law, construing it, defining it, determining it, then acting with the power of the Sovereign and the legitimate power of the state, to take the liberty and property of attorneys. See 1 Am. Jur. 2d. section 19," Administrative Law."

The legislature's ability to create administrative bodies is limited to its constitutional mandate. That mandate is first

controlled by the People as the legislature may not create entities not for the Public's health or safety or welfare nor may it empower them to act for special interests or private interests. The need for administrative agencies grew out of the complexities of government and a need to have specialized knowledge in experts hearing the initial issues. However, the alleged State Bar court has no specialized knowledge.

The difficulty first arises in that attorneys are not under either the Executive or Legislative' branches of government, but are under the Judicial Branch as " Court Officers." In re: Cate, (1928) 273 P. 617, supplementing opinions 270 P. 968 and 271 P. 356. When the

State Bar first claimed that the legislature had empowered it to license attorneys through the passage of the State Bar Act, the Court was quite clear any such claim to licensing by the legislature or by the legislature delegating attorney licensing to a State Bar association was Ultra Vires and void as " the attorney does not hold office as a public trust, within the Constitution, but is a court officer, exercising a privilege or franchise " granted by the separate Judicial Branch of government, which has exclusive jurisdiction over its own " Court Officers." That decision also made clear there is no dual jurisdiction in both the legislative and judicial branches to license law-

yers. It resides only in the Judiciary.

The State Bar of California was created by the legislature and not by the separate Judicial Branch. Its creation was accomplished through passage of the State Bar Act in 1927. Its powers are expressly defined and delineated in section 6001. It is listed as a public corporation. The statute says the California State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives (a) make contracts, (b) borrow money, contract debts, issue bonds, notes and debentures and secure the payment of or performance of its obligations, c) own, hold, use,

manage and deal in and with real and personal property, d) construct, alter, maintain and repair buildings ... e) Purchase, lease, obtain options upon, acquire by gift, bequest or other devise or otherwise, any real or personal property or any interest therein, f) Sell, lease, exchange, convey, transfer, assign,encumber, pledge, dispose of any of its real or personal property or any interest therein, including without limitation all or any portion of its income or revenues from membership fees paid or payble by members, g) Do all acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes."

Real courts, of course, can not perform many of these functions, as they are typically proprietary functions of private corporations.

One must also note that there is no statutory power for this corporation to create itself into or have a court.

Since the State Bar is a legislative creation, it may never have any subject matter jurisdiction to discipline or admit lawyers as admission and discipline are judicial functions reserved to the elected judges who sit in the courts created by the People through their Constitution. Art. 3, sec. 3 of the California Constitution mandates that each of the three branches of government are separate and equal. No branch may intrude or infringe

upon the functions and duties of the other branches of government. As stated in Hustedt v. Workers Compensation Appeals Bd.,(1981) 30 Cal.3d. 329,337, 178 Cal. Rptr. 801, 636 P. 2d. 1139, citing In re Lavine (1935) 2 Cal. 2d. 324,328, 41 P. 2d. 161, " An attorney is an officer of the court and whether a person shall be admitted (or disciplined) is a judicial, not a legislative question."

It is the exclusive prerogative, right, and duty of the Judicial branch of government to regulate its own officers. Brotsky v. State Bar (1962) 57 Cal. 2d. 287, Byrondonjack v. State Bar (1929) 208 Cal. 439, 281 P. 1018.

The constitutionality of the State Bar act was premised on

maintenance of the required separation of powers and protection of the due process rights of " Court Officers". Bryondonjack, supra. Thus, the State Bar may recommend a candidate for admission or recommend suspension or disbarment of an attorney to the California Supreme Court, but it may not have its own court to do so or exercise any court-like functions of doing so as it is a creature of statute and not a constitutionally-invested entity with judicial power. In re: Shattuck (1929) 208 Cal. 6, 12, 279 P. 998; Bryondonjack, supra.

As stated in Shattuck, supra, in the area of admission or discipline of attorneys, the " bar's role has consistently been articulated as that of an administra-

tive assistant to or adjunct of this court, which nonetheless retains its inherent judicial authority to disbar or suspend attorneys." That case further clarified that the State Bar Act is unconstitutional to the extent it attempts to usurp those judicial powers and functions for itself, as follows, at p. 12:

> " The only order or orders which are provided for (in the State Bar Act) and which have or were intended to have the effect of working the disbarment, suspension, or discipline of any person ... are the final orders which are to be made by this court under the provisions of said act, ... and any decision which the Board of Bar Governors may be empowered or minded to make... is merely recommendatory in character and has no other or further finality in effecting the disbarment, suspension or discipline of those persons who may be brought before said board..."

As stated in Fish v. State Bar,

(1931), the board of governors of the State Bar, when sitting in a disciplinary proceeding, is acting solely as an administrative arm of the California Supreme Court, and not as a court.

C. The State Bar Court is Unconstitutional as it seeks to divest the State Supreme Court or the Court of Appeals of their exclusive subject matter jurisdiction over attorneys

The State Bar now claims it licenses lawyers through the State Bar court. Sections 6007 (c), 6079, 6079.1, 6086, 6086. 5, 6082, 6084 (a), 6125, 6126 (b). The California Supreme Court's decision in Conway v. State Bar, 255 Cal. Rptr. 390 (Cal.1989), in effect, grants judicial power to the legislature to transfer the judicial functions of licensing to its creature, the

State Bar, by claiming to allow the bar to change active membership status in the bar to inactive membership in its organization.

This violates Art. 6, Sec. 9 of the California Constitution in that such membership is automatic upon the admission to practice law by the California Supreme Court.

The California State Bar Asciation through its alleged State Bar Court now claims it is a judicial body with judicial functions, powers, duties, and an independent adjudicatory authority. Section 6086.5.

To the extent that the Massachusetts judgment was premised on an alleged State Bar Court being a " judicial proceeding " under the meaning of the Full Faith and

Credit clause, the public act that had to be recognized first, the California Constitution, states that all judicial power is in the California Supreme Court, the Courts of Appeal, the Superior Courts, the Municipal Court, and the Justice Courts and has no provision for any other courts being created or allowed.

In fact, constitutionally the State Bar can not regulate, adjudicate, or enforce anything as it may never possess any judicial power as the state's voters have never approved it possessing any judicial power. The People abolished all authority in the Legislature to create any new courts or grant anyone any judicial power 24 years ago, reserving to them-

selves, the People, the sole and exclusive power to create any new courts or allow anyone to possess any judicial power. See Article 6, sections 1 and 9, Article 2, section 8, Article 4, section 1 and 16, Article 6, section 16, Ca. Constitution and Blume, " California Courts in Historical Perspective," 22 Hastings Law Journal 121; see Witkin, California Procedure, Volume 2, " Courts," p.153-171, 182-184, 188, 190, 194, 204.

The only way the State Bar Act was deemed constitutional was if it had no regulatory, no adjudicatory, and no enforcement powers, but served solely in an advisory capacity to the state Supreme Court with all final action in the state Supreme Court. Hogan v. State Bar,

(1951) 228 P. 2d. 554, C. 2d. 807. This principle is at variance with the state bar's claims that they make the orders, subject to later reversal or " oversight."

It was well-stated in former Justice Kaufman's dissent in Conway, supra, as follows, which decision does not address the unconstitutionality under the Due Process Clause of the United States Constitution of the state bar's claim to taking over the subject matter jurisdiction of the licensing court nor does it address the obvious Sherman Anti-Trust Act claims that private opponents and competitors can not license each other (at p. 404):

" The act further provides that upon any decision recommending the disbarment or suspension

from practice of a member, the bar shall immediately file a copy of its decision, together with the transcript and findings, with the clerk of this court. (s. 6081). The member may then, of course, file a petition for review to modify or reverse the decision recommending the disbarment or suspension. (s. 6082, 6083) When no petition for review has been filed, this court " shall make such order as it may deem proper in the circumstances." (s. 6084, italics added). Thus, even when a member fails to seek review, no discipline is imposed except upon order of this court, which retains its inherent authority to reverse or modify the bar's recommendation. See In re Jones, (1971) 5 Cal. 3d. 390, 394, 96 Cal. Rptr. 448, 487 P. 2d. 1016."

The State Bar Court is unconstitutional as it seeks to claim it has changed the state bar's constitutionally limited status from an administrative assistant to a Court to being its own Court replacing the licensing court. As stated in Lathrop v. Donohue, supra, by Jus-

tice Douglas, such a schemata is unconstitutional: " a self-policy provision whereby lawyers were given the power to investigate and disbar their associates would raise, under most if not all state constitutions, the type of problems presented in Schecter Corp. v. U.S. 295 U.S. 495, see 1 Davis, Administrative Law Treatise."

By seeking to claim that a privately-created court now transfers members of the State Bar from active members to inactive, [s. 6007 (c)], that this private court now receives and investigates complaints, makes findings, and makes recommendations to the 23 member board, and that this alleged State Bar Court can then, on its own, act on its own recommendations, (s.

6043), all due process of law is lost as it is merely superseding and supplanting the state supreme court's or the court of appeals' exclusive subject matter jurisdiction.

By claiming this private court may initiate and conduct investigations in all matters relating to or affecting a) the State Bar, or its affairs, the practice of law, the discipline of the members of the State Bar, the acts or practices of a a person whom the alleged State Bar court has reason to believe is engaged in the unauthorized practice of the law, and " any other matter within the jurisdiction of the State Bar," (s. 6044), the statute creates a roving and unlimited prosecutorial, adjudi-

catory, and self-interested private court that has unlimited subject matter jurisdiction and may combine within itself all of the functions of government reserved to the three separate branches. It may legislate, then execute, then adjudicate its own legislation, execution, and implementation.

In claiming that this private court may take and hear evidence pertaining to the proceeding, administer oaths and affirmations, and compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the proceeding, (s. 6049), it is attempting to give it judicial power it can not possess under the State Bar Act or Article 6 of the California

Constitution. In claiming this private court may admit the testimony of a witness given in a contested civil action or special proceeding to which the person complained against is a party, or in whose behalf the action or proceeding is prosecuted or defended, the State Bar purports to establish new and special and different rules of evidence for its private court which deviate from and are in violation of the Evidence rules applicable to all real courts of law. (s. 6049.2 and 6002)

When the State Bar purports to claim its private court may declare someone is in contempt of its alleged court if they refuse to appear and give testimony or to produce the books, papers or docu-

ments subpoeaned if they are " pertinent or proper," it seeks to establish rules of appearance and of production in violation of the Code of Civil Procedure, which is applicable to all other courts of real law. (s. 6050).

In purporting to claim that the alleged State Bar court may apply to the superior court for a contempt claiming that the proceeding is, " In the matter of.., Alleged Contemnor re: State Bar Court, No." it seeks to claim that a real court of law should and must treat it not as an administrative agency, but as an alleged court, thereby changing the standard of review and the burden of proof. (s.6051).

In claiming it can issue subpoenas, conduct depositions under

its rules of procedure, which are contrary to the rules of discovery applicable to other courts of law, it seeks to claim it can have a special, private court with no regularity of process or procedure. (s. 6052).

In claiming that the alleged State Bar court may discipline members by " inactivity, " and now suspensions or disbarments, it seeks to give itself finality as a judicial entity, and change any standard of review of its acts from the required De Novo review to the standard of review of lower courts by higher courts, to wit, " errors of law, the substantial evidence rule, and abuse of discretion. " (s. 6077) This then abolishes Article Article 3, section 3.5 of

the California Constitution, which prohibits the State Bar deciding any law issues.

Section 6082, as incorporated with section 6086.5, which provides that any person complained against may have the action of the alleged State Bar Court reviewed by the California Supreme Court or by a Court of Appeals, changes the standard of review from the required De Novo independent review and the required standard of convincing proof and to a reasonable certainty as to facts, with all reasonable doubts resolved in favor of the accused attorney to an error of law, substantial evidence, and abuse of discretion standard, which standard is only applicable to real courts with real judges of real

law. Kitsis v. State Bar, (1979) 153 Cal. Rptr. 836, 592 P. 2d. 323, 23 C.3d.857, Spindell v. State Bar, (1975) 118 Cal. Rptr. 480, 530 P. 2d. 168, 13 C. 3d. 253; Lee v. State Bar of Cal. (1970) 88 Cal. Rptr. 361, 472 P. 2d. 449, 2 C. 3d. 927.

The ultimate unconstitutionality is that the California Supreme Court has now passed rules asserting it shall allow the alleged State Bar Court to suspend or disbar some attorneys, while refusing for two years to hear the Petitions asserting this violates both our State and United States Constitutions. Section 6084 (a). This denies to some attorneys their rights to a constitutional De Novo and independent review of both the

alleged facts and the law and constitutional issues, and the right to the entry of an order by their own admitting and licensing court.

D. The State Bar Court is Unconstitutional as it claims to supplant the original subject matter jurisdiction over civil lawsuits reserved to the real courts of law

The charges in the Lebbos' case indicate the alleged State Bar Court is trying to try cases that are pending in real courts of law with real judges. As held in Lady v. Worthington (1944) 143 P. 2d. 1000, 61 C.A. 2d. 780, the State Bar may not review decisions or judgments of the supreme or other courts. The following, as the court files indicate, are matters that were or are pending in real courts of law, over which the alleged

State Bar court could exert no claim to any subject matter jurisdiction:

> Count two-2- On or about June 12, 1987, in the family law case of In re Rhedrick, you filed with the court an alleged copy of a court order, when in fact no such order had been signed by the Judge.

An examination of the pending Nullity action in the marriage of Rhedrick, case no. 629057 indicates that Lebbos' opposing counsel, Brad Baugh, in that case made that accusation, and the Commissioner dismissed it as a mix-up, on June 22, 1987. Exhibit 13: 3-4. The alleged State Bar Court claims it has jurisdiction to overturn the real court of law later.

> 3 (2)-On or about December 21, 1984,in the case of Lebbos v. Wooten, judgment was rendered against you in the amount of $ 51,000. On or about June 6, 1986, in accord with an Order of

Examination, your deposition was taken in an effort to determine your income and assets. At that deposition, you concealed assets from the judgment creditor.

As an inspection of Lebbos v. Wooten reveals, case no. 521953, if perjury or concealment of assets were involved in the order of examination, the opposing counsel's remedy in 1986 was to file a contempt charge or a perjury charge, which they never did. The alleged State Bar Court is not empowered to be a substitute for the duties and obligations of opposing counsel in pending litigation. It can not use coerced cash to represent private litigants in pending suits.

4 (2)-In or about February,1987, you sought to disqualify Judge James Stewart from the Sandhir case. In doing so, you made false statements in your moving papers and in court in support of your effort.

The issue of the disqualification for cause of Judge Stewart in case no. 528229, and the client's claims to his facts are a matter solely within the determination of solely the constitutional court of law, and the alleged State Bar Court may not substitute its judgment for the real Courts of Law or litigate those matters for one of the judges.

4 (3)-In or about March, 1987, you received a stipulation in Sandhir prepared by opposing counsel and signed by opposing counsel and her client. You altered the stipulation in Sandhir without the consent of opposing counsel. You submitted it to the court without informing the court that the allegations were made without the consent of opposing counsel.

This was the accusation of the terminated opposing counsel in the Marriage of Sandhir, Santa Clara Superior Court, case no. 528229.

The validity of the terminated attorney's accusation was pending appeal before a real court of law. Sandhir v. Sandhir, Sixth Appellate District Court of Appeals, docket no. H003799. Thus, the State Bar court could not constitutionally try to determine the merits of that appeal, which is what it did, interfering with it and destroying the jurisdiction of the court of appeal.

6 (1)- Since in or about 1986, you have repeatedly made offensive statements about judges, opposing counsel, and other persons connected with cases that you were involved in. The offensive behavior was not required by the justice of the particular case.

Count six, founded on an " Offensive Personality statute, " section 6068 (f), is obviously a veiled attempt to try the merits of

pending Federal and state suits by claiming those merits are " Offensive " :

6 (2)(A)- On or about September 14, 1986, you stated that Santa Clara County Superior Court is dirty and fails to follow lawful procedures.

This appears to be an attempt for the alleged State Bar Court to try the merits of the pending Federal Civil Rights litigation concerning the embezzlements the Superior Court judges caused to Lebbos in Lebbos v. Judges, Santa Clara Superior Court, 883 F. 2d. 810 (Ninth) (1989).

6 (2)(B)- On or about September 19, 1986, you filed a declaration in Lebbos vs. Wooten which contained repeated offensive attacks on judges in Santa Clara County.

This appears to have been an attempt to try the merits of Lebbos v. Judges, Santa Clara Superior

Court, supra, pending in the Ninth Circuit.

6 (2)(C)- On or about December 22, 1986, in the Bankruptcy of Betsey Lebbos, you accused Judge Rushing of making an illegal order; And accused Ms. Wooten and attorney Jeralyn Spradlin of stealing your mail.

This is the exact merits of Lebbos v. Judges, supra.

6 (3)(A)- On or about February 17, 1987, you stated that Judge James Stewart is incapable of understanding his oath of office, that he is reckless, that he is deliberately destroying a child's life, and that he is racially biased.

It is clear that those statements were not those of Attorney Lebbos. They were similar statements of her client in his verified disqualification request, Exhibit MM, pending a final determination in a real court of law.

6 (3)(B)- On or about April 4, 1987, you stated that Judge Stewart meddles beyond public decency, that

he is bigoted, and that court attache Baron is a flunky.

This appears to be a near identical problem to that presented above.

6 (G) (a)- On or about October 19, 1987, in In Re Kemp, You referred to Judge Thomas Black's pending criminal prosecution although it had no relevance to the matter before the Court; b) You also made other charges against Judge Black without any factual basis to support them.

The reference to October 19, 1987 is obviously to the client's Petition for Judge Kemp's disqualification for cause submitted for a proper determination to the real Court of law. Ex.55. Relevance and materiality is a matter for a real court of law, not a disciplinary agency with no subject matter jurisdiction to decide those issues. To like effect is the allegation of

falsity, as it is within the Court of Appeals' jurisdiction to determine falsity. Judicial Notice of Kemp vs. Santa Cruz Superior Court vs.Kemp, Santa Cruz # 93355, Ct. of Appeals # H003674, and Cal. Supreme Ct. # S002975, reflects that these matters were properly dealt with by the real courts of law.

6 (3)(H)- On or about November 25, 1987, you were held in contempt for your behavior in the Webber matter.

As Exhibit KKKK indicates, the alleged contempt was sufficiently in dispute that 3 out of the 7 Justices of the state Supreme Court voted to stay it. With the real court of law sufficiently in dispute, the State Bar court was and is without jurisidiction to substitute its judgment for the real court of law.

7 (1)- Since in ..1986, you have made false statements about judges, attorneys, and other persons. Said statements were made with no factual basis to support them.

Count seven was an attempt to try the merits of pending cases by claiming a position taken in litigation was " false," when denying to the attorney her right to present her facts and her law to the real court of law before whom the issues were really pending.

7 (2) (A)- In Lebbos vs. Wooten, at your deposition taken on or about June 6, 1986, you testified that you had so few client files that they fit in your desk. On September 19, 1987, you filed a declaration claiming to have approximately 1,000 client files at the same location.

If the statement in the deposition was false, then the opposing counsel had their remedy by way of contempt or perjury, but they never sought their remedy.

7 (2)(B)- On or about December 22, 1986, in the Bankruptcy of Betsey Lebbos, you claimed that a Court Order affecting your assets was illegal.

That is the exact issue pending in Lebbos v. Judges, supra.

7 (3)(A)- In or about April, 1987 you accused Judge Rushing of trying to bankrupt you out of spite.

Those are issues now pending in Lebbos v. Judges, supra.

7 (3)(B)- On or about October 19, 1987 you accused Judge Black of awarding custody of the children in the Kemp matter without notice to the other party.

The brief shows no such accusation was ever made. Ex.55: 52:4-16.

7 (3)(C)- On or about November 23, 1987, you falsely represented to the Court of Appeal that the State Bar had decided not to bring charges against you based on Judge Fogel's Complaint.

Judicial Notice of the charges shows they were not filed on November 23,1987. They were not filed

until March 7, 1988.

8 (1)- From and since early 1987, you have sought to disqualify all Santa Clara County Judges from hearing cases in which you are an attorney. Your initial motion to disqualify the judges was denied on or about April 30, 1987. Since then you have repeatedly filed the same or similar motions in subsequent proceedings, although there were no new facts to justify them.

The validity of a disqualification for cause is not within the jurisdiction of the State Bar. It is within the jurisdiction of the real courts of law under C.C.P. section 170.1 et. seq.

8 (2)- After you lost various rulings in Lebbos vs. Wooten, you filed Lebbos vs. Judges of the Superior Court (United States District Court, N.D., CA, # C 86 0704 SW), which lawsuit was not just, and which lawsuit was commenced with the corrupt motive of passion and/ or interest.

The State Bar claims it decides merit to lawsuits, and not the real courts of law. The Ninth Circuit

disagrees with the alleged state bar's courts claims to unjustness of this lawsuit and has allowed the attorney to proceed to trial in Federal Court for deprivation of her constitutional rights to practice law and for constitutional torts inflicted upon her by action of the state court and the state bar's complaining witnesses, Miller, Grilli, and Spradlin, in unlawfully changing her address, stealing her, her clients', and her family's mail, assets and property. Lebbos v. Judges, supra, at p.818.

The State Bar is not authorized to try pending suits, yet it appears in the Lebbos case, that was their sole and non-jurisdictional intent. People v. Wheeler, (1952) 249 P. 2d. 299, 113 C.A. 2d.

881; Kohr v. Kohr (1963) 31 Cal. Rptr. 85, 216 C.A. 2d. 516; Clark v. State Bar 246 P. 2d. 1, 39 C. 2d. 161 (1956); Gallagher v. Municipal Court of the City of Los Angeles, (1948) 192 P.2d. 905, 31 C. 2d.784; Platnauer v. Superior Court in and for Sacramento County (1917) 163 P. 237, 32 C.A. 463; Sullivan v. State Bar (1946) 170 P. 2d.888, 28 C.2d. 488.

The proper scope of the state bar's jurisdiction is that it can not entertain disciplinary proceedings until the truth of a matter then pending is determined by a competent court of law. In re: Lowenthal, (Sup. 1894) 37 P. 526; Wyatt v. Stephens (1894) 36 P. 586.

II.

Conclusion

As stated in Nesblett v.State Bar of California, 109 P. 2d. 340, 17 C. 2d. 77 (1941), the right to practice law is a valuable one which should not be taken away under circumstances that have even the slightest tendency to suggest any unfairness or disadvantage therein to the attorney whose right to remain in his profession is challenged.

It is unfair and a disadvantage for an administrative arm of the court to suddenly claim to elevate itself into an alleged court. It is unfair and a disadvantage to purport to force an attorney to present their cases in two different tribunals at once, and then have a non-jurisdictional tribunal, such as the State Bar Court, act-

ing solely for the opposing attorney, prevent the real court of law exercising its subject matter jurisdiction by claiming to prevent the attorney from appearing by claiming to enroll her involuntarily as an inactive member of the State Bar, especially when that is done, ex parte, at the request of her opponents in the real suit in the real court of law. This use of an alleged State Bar court for opponents underscores the need to have it declared a Nullity, as no constitutional court of law can represent private opponents and competitors.

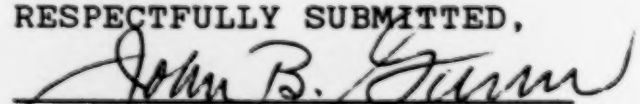
For the foregoing, Amicus requests that this Court hear the Petition and establish the State Bar Court is unconstitutional as

a violation of fundamental substantive due process of law as it has no subject matter jurisdiction.

Amicus requests that the Massachusetts judgment be reversed and voided as the Lebbos' proceedings were a Nullity for lack of subject matter jurisdiction.

A principle as old as the law itself is that any act of a court without jurisdiction is void and a Nullity. Concord Casualty and S. Co. v. United States, (C.C.A.) 69 F. 2d.78, 91 A.L.R. 885.

RESPECTFULLY SUBMITTED,



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